

1984 WL 249890 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 16, 1984

\*1 Robert H. Orr, Jr.  
Sheriff  
Chester County Sheriff's Department  
Post Office Box 723  
Chester, SC 29706

Dear Sheriff Orr:

In a letter to this office, you requested an opinion as to the responsibilities of a sheriff and his deputy in assisting bail bondsmen in apprehending individuals who have jumped bail.

Generally, I am unaware of any State statutory provisions or case law commenting on your question. In your letter, you referenced the fact that generally law enforcement officers are not authorized to make an arrest without an arrest warrant except where a crime is committed in their presence. In addition to such, obviously if you were presented with a situation where a court had specifically ordered the arrest of an individual pursuant to an instrument, such as a bench warrant, you would be authorized and obligated to apprehend, such an individual. See, Op. Atty. Gen., December 7, 1983.

It has been stated that:

The sureties on a bail or recognizance are entitled to take the principal into custody for the purpose of surrendering him in exoneration of their liability. Such right has been likened to the rearrest by the sheriff of an escaping prisoner. But this right is not derived from the State through subrogation; it is an original right arising from the relationship between the principal and his bail. 8 Am. Jur. 2d, Bail and Recognizance, § 119, p. 670.

The South Carolina Supreme Court in [Wilson v. McLeod](#), 274 S.C. 525, 265 S.E.2d 677 (1980), made a similar finding. It has been further stated that:

In the absence of statutory limitations, sureties on a bail bond may deputize others of suitable age and discretion to take the principal into custody . . . . Where the surety on a bail bond procures the rearrest of his principal by a sheriff, or other peace officer, it is the general rule that the officer is empowered to make the arrest as an agent of the surety and not as an officer per se. 8 Am. Jur. 2d, Bail and Recognizance, § 120, pp. 670-671. See also: 8 C.J.S., Bail, § 87, pp. 243-244.

Referencing the above, it is clear that a sheriff or deputy, if called upon to assist in taking a principal on a bail bond into custody, would be responding not as a law enforcement officer but as an agent of the surety. Therefore, it appears that there would be no per se obligation on a sheriff or deputy to respond in such a situation. In the absence of a separate order of a court mandating the arrest of an individual, or other recognized basis for arresting an individual, it appears that there is no absolute responsibility on a sheriff or his deputy to assist a bail bondsman in apprehending individuals who have jumped bail.

If there are any questions, please advise.

Sincerely,

Charles H. Richardson  
Assistant General Attorney

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